

Message Text

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DRAFTED BY EB/ORF/FSE:PKBULLEN;L/EUR:JCROOK;MEM
APPROVED BY EB/ORF/FSE:SWBOSWORTH
FERC: J. ADGER
DOE/IA: P. BORRE
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FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA IMMEDIATE

C O N F I D E N T I A L STATE 184538

E.O. 11652: GDS

TAGS: ENRG, CA

SUBJECT: FOOTHILLS' PIPE PROCUREMENT PLAN

REF: OTTAWA 3524, 3543

1) DCM TOOK CORRECT LINE IN INITIAL APPROACH TO NORTHERN PIPELINE AGENCY. REQUEST AMBASSADOR MAKE POINTS BELOW BOTH TO PIPELINE AGENCY (SHARP) AND TO DEPUTY PRIME MINISTER MCEACHEN. (WE ARE FORWARDING TO AMBASSADOR LETTER FROM FERC COMMISSIONER SMITH WHICH GOES INTO THESE ISSUES IN MORE DETAIL; WE WOULD ANTICIPATE GETTING INTO DETAILED QUESTIONS IN CONSULTATIONS PROPOSED IN PARA 9.)

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2. IT IS FUNDAMENTAL FOR U.S. THAT CRITERIA IN PARAGRAPH 7 OF THE AGREEMENT ON PRINCIPLES APPLTCABLE TO A NORTHERN NATURAL GAS PIPELINE BE ADEQUATELY MET. THAT PROVISION REQUIRES EACH GOVERNMENT TO "ENDEAVOR TO ENSURE THAT THE SUPPLY OF GOODS AND SERVICES TO THE PIPELINE WILL BE ON GENERALLY COMPETITIVE TERMS," TAKING INTO ACCOUNT PRICE, RELIABILITY, SERVICING CAPACITY, AND DELIVERY SCHEDULES.

THE USG UNDERSTANDS THIS CLAUSE TO PRECLUDE ARBITRARY EXCLUSION OF POTENTIAL SUPPLIERS WHO COULD BE COMPETITIVE UNDER THE CRITERIA IN THE AGREEMENT, OR ARBITRARY

ELIMINATION OF COMPETITIVE BIDS.

3) IN ACCORD WITH THE AGREEMENT, U.S. FIRMS SHOULD NOT BE ARBITRARILY EXCLUDED FROM PROVIDING GOODS AND SERVICES FOR CANADIAN PORTIONS OF PROJECT AND VICE VERSA. FURTHERMORE, THE ENTIRE PROJECT WILL IN THE FINAL ANALYSIS BE PAID FOR BY U.S. CONSUMERS THROUGH THE PRICE THEY PAY FOR DELIVERED GAS. A PROCESS WHICH ENSURES COMPETITIVE TERMS IS NEEDED BOTH FOR THE EFFECT IT CAN HAVE IN HELPING HOLD COSTS DOWN, AND IN ORDER TO DEMONSTRATE TO THE U.S. PEOPLE AND THEIR REPRESENTATIVES THAT COSTS ARE AS LOW AS PRUDENTLY POSSIBLE. FERC IN PARTICULAR WILL BE ASKED TO APPROVE TRANSPORTATION CHARGES BASED ON THE CONSTRUCTION COSTS, AND WILL HAVE TO BE ASSURED THAT "GENERALLY COMPETITIVE TERMS" HAVE BEEN FULFILLED.

4) BLAIR'S DESCRIPTION OF FOOTHILLS' PIPE PROCUREMENT PLAN IS AMBIGUOUS IN MANY RESPECTS, BUT PENDING CLARIFICATION WE HAVE SERIOUS QUESTIONS AS TO WHETHER PLAN IS CONSISTENT WITH PARAGRAPH 7. THESE INCLUDE THE FOLLOWING:

5) WE ARE CONCERNED BY POSSIBLE LIMITATIONS ON U.S. CONFIDENTIAL

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FIRMS BIDDING FOR PIPE SIZES PRODUCED IN U.S. WHICH MAY BE READ INTO BLAIR'S DESCRIPTION OF PLAN. WHILE BLAIR SEEMS TO CONTEMPLATE THAT U.S. FIRMS MIGHT PROVIDE SOME PIPE, HIS PHRASEOLOGY RAISES QUESTIONS ABOUT EVENTUAL CRITERIA FOR DETERMINING THEIR ELIGIBILITY. USG WOULD BE SERIOUSLY CONCERNED IF FUTURE CRITERIA FOR SELECTION WERE NOT CLEARLY BASED ON THE FACTORS FOR DETERMINING COMPETITIVENESS SPECIFIED BY THE AGREEMENT. IN THIS CONNECTION, WE ARE CONCERNED BY FOOTHILLS' EVIDENT INTENT (PARA 4 OF BLAIR LETTER, OTTAWA 3524) TO LEAVE ITSELF VERY BROAD DISCRETION IN DECIDING WHETHER TO CONSIDER SUBMISSIONS BY OFFSHORE SUPPLIERS. WE BELIEVE THAT DECISIONS NOT TO DEAL WITH U.S. OR OTHER OFFSHORE SUPPLIERS, ON BASIS OF CRITERIA INCONSISTENT WITH THOSE SPECIFIED BY THE AGREEMENT, WOULD CREATE SEVERE PROBLEMS.

6) FOOTHILLS' INTENTION TO INTRODUCE NEW CRITERIA-- PARTICULARLY "NATIONAL PROCURING AND SUBSIDIZING POLICIES"--IN EVALUATING BIDS FOR ALL PIPE IS OF GREAT CONCERN TO US. GIVING SIGNIFICANT WEIGHT TO SUCH FACTORS WOULD NOT BE CONSISTENT WITH THE OBLIGATION TO ENSURE THAT PROCUREMENT BE ON GENERALLY COMPETITIVE TERMS. WE

WOULD VIEW EXCLUSION OF U.S. OR OTHER FOREIGN FIRMS IN FAVOR OF HIGHER-COST CANADIAN SOURCES AS INCONSISTENT WITH LETTER AND SPIRIT OF AGREEMENT.

7) WE ARE ALSO CONCERNED BY THE PLAN'S PREDETERMINATION THAT ONLY CANADIAN SUPPLIERS WOULD BE CONSIDERED FOR 56-INCH PIPE. BLAIR'S DESCRIPTION DOES NOT PROVIDE ANY ASSURANCE THAT OFFSHORE PRODUCERS WHICH ARE COMPETITIVE UNDER CRITERIA ESTABLISHED BY THE AGREEMENT WOULD BE ELIGIBLE TO BID, NOR DOES IT OUTLINE ALTERNATIVE METHODS OF ENSURING LEAST-COST PROCUREMENT. WE RECOGNIZE THAT AS PRACTICAL MATTER CANADIAN FIRMS ARE LIKELY SUPPLIERS IN VIEW OF THEIR LOCATION ADVANTAGE AND THE DEPRECIATION OF THE CANADIAN DOLLAR RELATIVE TO YEN AND OTHER CUR-
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RENCIES. HOWEVER, THIS WOULD BE ACCEPTABLE AS A RESULT OF A COMPETITIVE PROCESS, BUT NOT OF A PREDETERMINATION ON OTHER GROUNDS.

8) THE AGREEMENT PROVISIONS DISCUSSED HERE ARE IN FACT POINTS ON WHICH THERE SHOULD BE CONSIDERABLE MUTUALITY OF INTEREST. FOR EXAMPLE, WE RECOGNIZE THE MERIT OF MUTUALITY OF COMPETITIVE ACCESS AS OUTLINED BY SHARP DURING JUNE VISIT TO WASHINGTON. ON THE U.S. SIDE, WE WOULD BE PREPARED TO DISCUSS ESTABLISHING PROCEDURES TO ENSURE THAT CANADIAN FIRMS HAVE AN EQUAL OPPORTUNITY TO BID ON WORK ON PORTIONS ON THE U.S. SIDE OF THE BORDER.

9) IN VIEW OF THE PRECEDENTS WHICH WILL BE INVOLVED, AND IN KEEPING WITH PARAGRAPHS 7 AND 8 OF THE AGREEMENT, WE BELIEVE THAT GOVERNMENT-TO-GOVERNMENT CONSULTATIONS ON MODALITIES FOR IMPLEMENTING PARAGRAPH 7 SHOULD BE HELD AS SOON AS POSSIBLE, BEFORE EITHER SIDE GOES AHEAD WITH PROMULGATING INITIAL PROCUREMENT PLANS FOR SUCH A MAJOR ITEM AS PIPE. VANCE

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